

## Message Text

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 EA-06 NSC-05 NSCE-00 PM-03 SP-02

INR-05 CIAE-00 ACDA-10 OES-02 PRS-01 USIE-00 SSO-00

INRE-00 EUR-08 /058 W  
----- 066845

O R 100344Z AUG 76  
FM AMEMBASSY WELLINGTON  
TO SECSTATE WASHDC IMMEDIATE 1826  
INFO AMEMBASSY OTTAWA  
AMEMBASSY CANBERRA  
SECDEF WASHDC  
CNO WASHDC  
CINCPAC

C O N F I D E N T I A L SECTION 1 OF 3 WELLINGTON 2997

LIMDIS

CINCPAC ALSO FOR POLAD

E.O. 11652: GDS  
TAGS: ANZUS, PFOR, MARR, MNUC, NZ, CA  
SUBJECT: CANADIAN AIDE MEMOIRE ON LIABILITY FOR NUCLEAR INCIDENTS

REF: (A) WELLINGTON 2871, (B) STATDE190428

1. SUMMARY: DURING A CONVERSATION THIS MORNING  
WITH DEPUTY PRIME MINISTER TALBOYS, HE MADE AVAILABLE  
TO ME THE FULL TEXT OF A JULY 27, 1976 LETTER FROM THE  
CANADIAN HIGH COMMISSION IN WELLINGTON TO WARREN PAGE,  
A REPORTER FROM THE "STAR" NEWSPAPERS OF AUCKLAND AND  
CHRISTCHURCH. THE CANADIAN HIGH COMMISSION SIMULTANEOUSLY  
FURNISHED PAGE WITH AN ANALYSIS, PREPARED BY THE  
LEGAL ADVISORY DIVISION OF THE DEPARTMENT OF EXTERNAL  
AFFAIRS, OF U.S. ASSURANCES CONCERNING INCIDENTS  
ARISING FROM THE VISIT OF U.S. NUCLEAR WARSHIPS  
AND NUCLEAR WEAPONS. THESE ITEMS ARE A MAJOR PORTION  
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OF THE INFORMATION UPON WHICH PAGE BASED HIS JULY 31

STORY REPORTED IN WELLINGTON'S 2871. REPORT OF MY CONVERSATION WITH MINISTER TALBOYS AND THE GONZ'S INTEREST IN OBTAINING ASSURANCES FOR LIABILITY FOR NUCLEAR INCIDENTS FOLLOWS BY SEPTEL. END SUMMARY.

2. TEXT OF JULY 27, 1976 LETTER FROM A.P. SMYTH, FIRST SECRETARY OF THE CANADIAN HIGH COMMISSION, WELLINGTON, TO WARREN PAGE: QUOTE

DEAR MR. PAGE,

I AM FINALLY ABLE TO PROVIDE YOU WITH SOME DETAILED INFORMATION CONCERNING VISITS TO CANADA BY NUCLEAR POWERED WARSHIPS IN RESPONSE TO YOUR LETTER OF APRIL 21 ADDRESSED TO THE HIGH COMMISSIONER. THE FOLLOWING INFORMATION HAS BEEN PROVIDED BY THE DEPARTMENT OF NATIONAL DEFENSE.

VISITS COMMENCED IN 1967. TO THE END OF 1975 THERE HAVE BEEN 69 VISITS RECORDED, 15 OF WHICH TOOK PLACE IN 1975. THERE HAVE BEEN NO ACCIDENTS OR EMERGENCIES WITH ANY OF THE VISITS.

DURING THE FIRST FEW VISITS IN 1967-68 SOME PUBLIC OPPOSITION WAS DISPLAYED IN THE FORM OF DEMONSTRATION MARCHES. AS THE FREQUENCY OF THE VISITS INCREASED, HOWEVER, AND THE PRESS DISCONTINUED ITS PRACTICE OF REPORTING ON THE VISITS, PUBLIC OPPOSITION CEASED SO THAT TODAY THERE IS NO EVIDENCE OF PUBLIC OPPOSITION.

FEDERAL AND PROVINCIAL STANDARDS ON SAFETY AND POLLUTION DO NOT PERMIT ANY RADIATION RELEASE AND PROVIDE FOR A MONITORING PROCEDURE TO CONFIRM THAT NO RELEASE HAS, IN FACT, TAKEN PLACE.

THERE ARE NO ARRANGEMENTS FOR DEALING WITH ACCIDENTS INVOLVING WEAPONS OR OTHER NUCLEAR EQUIPMENT APART FROM PROPULSION REACTORS.

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U.S.A. AUTHORITIES HAVE COOPERATED FULLY WITH IMPLEMENTATION OF ALL REGULATIONS, PROCEDURES AND INSTRUCTIONS ASSOCIATED WITH THE VISITS.

THE SITUATION WITH RESPECT TO LIABILITY IS DESCRIBED IN THE ATTACHED PAPER PREPARED BY THE LEGAL ADVISORY DIVISION OF THE DEPARTMENT OF EXTERNAL

AFFAIRS. COPIES OF THE NATO STATUS OF FORCES  
AGREEMENT AND THE VISITING FORCES ACT ARE ALSO  
ATTACHED.

I HOPE THAT THIS PROVIDES YOU WITH THE INFOG-58ON  
YOU REQUIRE. I WOULD APPRECIATE YOUR SENDING US  
A COPY OF YOUR ARTICLE WHEN IT APPEARS.

SINCERELY YOURS,  
UNQUOTE

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INR-05 CIAE-00 ACDA-10 OES-02 PRS-01 USIE-00 EUR-08

SSO-00 INRE-00 /058 W  
----- 066921

O R 100344Z AUG 76  
FM AMEMBASSY WELLINGTON  
TO SECSTATE WASHDC IMMEDIATE 1827  
INFO AMEMBASSY OTTAWA  
AMEMBASSY CANBERRA  
SECDEF WASHDC  
CNO WASHDC  
CINCPAC

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3. TEXT OF ANALYSIS, LEGAL ADVISORY DIVISION, CANADIAN  
DEPARTMENT OF EXTERNAL AFFAIRS: QUOTE

THE U.S. CONGRESS ENACTED PUBLIC LAW 93-513 ON  
DECEMBER 6, 1974; IT IS NOTHING MORE THAN A UNILATERAL  
DECLARATION ON THE PART OF THE UNITED STATES, AND  
MAY BE REPEALED AT ANY TIME WITHOUT

ANY NOTICE TO THE OUTSIDE WORLD; IT CAN HAVE NO STATUS BEFORE A NON-U.S. COURT; IT STATES THEM "IT IS THE POLICY OF THE UNITED STATES THAT IT WILL PAY CLAIMS OR JUDGEMENTS FOR BODILY INJURY, DEATH, OR DAMAGE TO OR LOSS OF REAL OR PERSONAL PROPERTY PROVEN TO HAVE RESULTED FROM A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF A UNITED STATES' WARSHIP". LONG BEFORE THIS ENACTMENT, HOWEVER, CANADIAN AUTHORITIES HAD TO CONSIDER UNDER WHAT CONDITIONS VISITS TO CONFIDENTIAL

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CANADIAN PORTS BY EITHER NUCLEAR-POWERED U.S. WARSHIPS OR U.S. WARSHIPS CARRYING NUCLEAR WARHEADS WOULD BE CONSIDERED POSSIBLE AND ACCEPTABLE.

IN FEBRUARY OF 1967, THE CANADIAN GOVERNMENT AGREED, FOLLOWING A STUDY BY LEGAL OFFICIALS OF THE DEPARTMENTS OF NATIONAL DEFENCE, JUSTICE AND EXTERNAL AFFAIRS, THAT AN UNDERTAKING BY THE U.S. GOVERNMENT STIPULATING THAT "EXCEPT IN CASES COVERED BY THE 1951 NATO STATUS OF FORCES AGREEMENT (CANADIAN TREATY SERIES 1953/13), CLAIMS ARISING OUT OF NUCLEAR INCIDENT INVOLVING A VISITING NUCLEAR-POWERED WARSHIP SHOULD BE DEALT WITH THROUGH DIPLOMATIC CHANNELS IN ACCORDANCE WITH CUSTOMARY PROCEDURES FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND EQUITY. COULD BE APPROVED AS CONSTITUTING A SUFFICIENT EXPRESSION OF THE RESPONSIBILITY OF THE U.S. GOVERNMENT WITH REGARD TO POSSIBLE CLAIMS FLOWING FROM A NUCLEAR INCIDENT OR ACCIDENT INVOLVING A U.S. NUCLEAR-POWERED WARSHIP ON A VISIT TO A CANADIAN PORT. SUCH A STATEMENT, ENTITLED "STATEMENT OF THE UNITED STATES GOVERNMENT ON THE OPERATION OF UNITED STATES NUCLEAR POWERED WARSHIPS IN FOREIGN PORTS", AND IDENTICAL TO OTHER STATEMENTS DIRECTED TO OTHER COUNTRIES, WAS OFFICIALLY SUBMITTED TO THE CANADIAN AUTHORITIES BY THE U.S. SECRETARY OF STATE ON FEBRUARY 20, 1967. ON MAY 6, 1968, AND AT THE INVITATION OF THE CANADIAN GOVERNMENT, THAT STATEMENT WAS AMENDED BY THE STATE DEPARTMENT SO AS TO ALSO COVER INCIDENTS INVOLVING NUCLEAR WARHEADS BEING CARRIED BY VISITING U.S. WARSHIPS, BE THEY NUCLEAR-POWERED OR NOT. ON MARCH 18, 1969, THE CANADIAN AUTHORITIES OFFICIALLY INFORMED THE STATE DEPARTMENT THAT CANADA CONSIDERED THE 1967 STATEMENT, AS AMENDED, AS SATISFACTORY TO THE CANADIAN GOVERNMENT".

IT SHOULD ALSO BE NOTED THAT WHEN, IN THE SPRING  
OF 1970, CONSIDERATION WAS GIVEN TO WHETHER A SIMILAR  
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STATEMENT BY THE U.K.  
AUTHORITIES WOULD BE CONSIDERED  
ACCEPTABLE BY CANADA, AN INTERNAL CANADIAN  
GOVERNMENT STUDY CONCLUDED THAT THE DEPARTMENTS  
OF NATIONAL DEFENCE AND EXTERNAL AFFAIRS WERE  
"SATISFIED WITH THE NATURE AND EXTENT OF THE LEGAL  
LIABILITIES INVOLVED SHOULD A NUCLEAR  
INCIDENT OCCUR".

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 NSC-05 NSCE-00 EA-06 PM-03 SP-02

INR-05 CIAE-00 ACDA-10 OES-02 PRS-01 USIE-00 EUR-08

SSO-00 INRE-00 /058 W  
----- 066981

O R 100344Z AUG 76  
FM AMEMBASSY WELLINGNW  
TO SECSTATE WASHDC IMMEDIATE 1828  
INFO AMEMBASSY OTTAWA  
AMEMBASSY CANBERRA  
SECDEF WASHDC  
CNO WASHDC  
CINCPAC

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IT SHOULD BE ADDED HERE THAT THESE STATEMENTS WERE NOT LIMITED TO THE STRICT QUESTION OF LEGAL LIABILITY BUT ALSO DEALT, EXTENSIVELY, WITH THE APPLICATION OF VARIOUS STANDARDS MEANT TO ENSURE THAT THE RISK OF INCIDENTS WAS MINIMIZED TO THE LARGEST POSSIBLE EXTENT.

FURTHERMORE, ONE OF THE STUDIES WHICH HAD CONCLUDED LVITONTX##THAT THE STATEMENTS WERE ACCEPTABLE HAD EXPRESSED THE OPINION THAT THESE WERE NO MORE THAN "DECLARATORY OF THE LAW", AND THAT THEY SIMPLY REINFORCED, WITHOUT REALLY ADDING TO IT, THE LEGAL SITUATION AS IT WAS THEN PERCEIVED AS A RESULT OF THE STATUS OF FORCES AGREEMENT (SOFA) AND "CUSTOMARY PROCEDURES FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND CONFIDENTIAL

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EQUITY". WE DO NOT THINK THAT WE NEED TO SPELL OUT IN DETAIL THE COMBINED EFFECT OF SOFA (A COPY OF WHICH IS ATTACHED HERETO FOR ONWARD TRANSMISSION TO WELLINGTON, AND, THROUGH THE CANADIAN HIGH COMMISSION, TO THE INTERESTED JOURNALIST), CANADA'S VISITING FORCES ACT (WHICH TRANSLATES SOME OF THE OBLIGATIONS UNDER SOFA INTO CANADIAN LEGISLATION), AND THOSE GENERAL PRINCIPLES OF LAW AS EMBODIED BY THE STATEMENTS. IT SHOULD SUFFICE TO SAY THAT CANADA HAS CONSIDERED THESE TO BE ADEQUATE TO ALLOW, IN CONJUNCTION WITH COMPLIANCE WITH OTHER SAFETY REQUIREMENTS, VISITS TO ITS PORTS OF NUCLEAR-POWERED U.S. WARSHIPS, OR U.S. SHIPS CARRYING NUCLEAR WARHEADS.

THE FOREGOING IS NOT TO SAY THAT LEGAL ADVISERS TO THE CANADIAN DEPARTMENTS CONCERNED HAVE NOT CONSIDERED IN THE PAST OR DO NOT CONSIDER NOW THAT LIABILITY IN THE CASES CONCERNED COULD NOT BE MORE TIGHTLY OR MORE ADEQUATELY COVERED. THE OPINION SIMPLY HAS BEEN, AND STILL IS, THAT IN THE LIGHT OF ALL THE CIRCUMSTANCES INVOLVED, BE THEY POLITICAL, MILITARY, OR OF OTHER NATURE, THE ARRANGEMENTS DESCRIBED ABOVE WERE AND ARE "SATISFACTORY". PUBLIC LAW 93-513 OF DECEMBER 6, 1974, A COPY OF WHICH WAS OFFICIALLY TRANSMITTED TO THE CANADIAN AUTHORITIES UNDER COVER OF DIPLOMATIC NOTE NO. 20 OF JANUARY 1, 1975 WITH A STATEMENT TO THE EFFECT THAT ITS PROVISIONS WERE IN EFFECT "FOR ALL U.S. NUCLEAR-

POWERED WARSHIPS ENTERING PORTS IN CANADA"  
CONTRIBUTED TO REINFORCING THE  
ASSURANCES ALREADY RECEIVED. UNQUOTE  
SELDEN

NOTE BY OC/T: ##AS RECEIVED. CORRECTION TO FOLLOW.

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## Message Attributes

**Automatic Decaptioning:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** PUBLIC CORRESPONDENCE, NUCLEAR POWERED SHIPS, VISITS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 10 AUG 1976  
**Decaption Date:** 28 MAY 2004  
**Decaption Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** SmithRJ  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Document Unique ID:** 00  
**Drafter:** n/a  
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**Executive Order:** GS  
**Errors:** N/A  
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**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** LIMDIS  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 7  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** LIMDIS  
**Reference:** 76 WELLINGTON 2871, 76 STATE 190428  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** SmithRJ  
**Review Comment:** n/a  
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**Review Date:** 17 NOV 2003  
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**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** CANADIAN AIDE MEMOIRE ON LIABILITY FOR NUCLEAR INCIDENTS  
**TAGS:** PFOR, MARR, MNUC, NZ, CA, US, ANZUS, (SMYTH, A P), (PAGE, WARREN)  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006